IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 186 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NANDLAL SHAMBHUBHAI PALEWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 186 of 2001

MS VIMLA NAILWAL for MR SAURIN A SHAH for Petitioner

MR SS PATEL APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/09/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated January 4, 2001, Annexure B to the petition, passed by the externing authority, i.e., Sub-Divisional Magistrate, Mahuwa, District Bhavnagar, by which he has externed the

petitioner for a period of two years from six districts i.e., Bhavnagar District, Rajkot, Ahmedabad, Junagadh, Amreli and Surendranagar and also the order dated March 7, 2001, Annexure C to the petition, passed by the appellate authority, confirming the order passed by the externing authority, and prayed to issue a writ, order of direction quashing and setting aside both the aforesaid orders.

2. A show cause notice under section 59 of the Bombay Police Act ('the Act' for short) dated August 9, 2000, Annexure A to the petition, was issued to the petitioner wherein several allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him are detrimental for maintenance of public order. Besides this, three cases also were registered against him with Talaja and Alang Police Stations for the commission of various offences. Therefore, by issuing show cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of two years from the districts to which reference is made in earlier paragraph of this judgment.

3. The externing authority after considering the material on the record passed the impugned order of externment dated January 1, 2001 in exercise of the powers conferred under Section 56 (b) of the Act externing the petitioner for a period of two years from the above mentioned districts.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred an appeal before the appellate authority which was dismissed by it vide order dated March 7, 2001, Annexure C to the petition.

5. Ms. Nailwal, learned advocate for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, she has also raised a contention that the petitioner belongs to Sathara, Taluka Talaja, District Bhavnagar, and he is externed not only from Bhavnagar District but from other five districts. He has further contended that in the show cause notice the

activities alleged against the petitioner are confined to Bhavnagar District only and the externing authority has not mentioned anything about the activities of the petitioner in the contiguous five districts. Therefore, according to the learned advocate for the petitioner, the impugned order of externment suffers from the vice of non-application of mind and is required to be quashed and set aside.

6. Mr. S.S. Patel, learned APP who appears for the respondents does not dispute the fact that the activities of the petitioner were confined to District Bhavnagar only and in the impugned order the detaining authority has not stated as to why the petitioner is required to be externed from other contiguous districts. He, therefore, urged that appropriate order may be passed in the facts and circumstances of the case.

7. I have considered the submissions advanced by the learned advocates for the parties. I have perused the averments made in the petition and also the orders passed by the externing authority and the appellate authority and other papers annexed to the petition.

8. It is true that the externing authority has power under Section 56 of the Act to remove or extern a person not only from the district within which the externing authority has jurisdiction, but also from the district contiguous to his own district. The criteria for passing such an order is provided for in section 56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order.

9. Coming to the facts of the present case, there is no manner of doubt that the externing authority has not mentioned either in his show cause notice or in the impugned order of externment as to what necessitated him to pass the order of externment of the petitioner from the above mentioned districts in addition to Bhavnagar District. Therefore, it can be said that at the time of passing of the impugned order of externment the externing authority has not mentioned as to why the petitioner should be externed from other districts mentioned in the order of detention in addition to Bhavnagar District. On this sole ground the orders of the externing authority

externing the petitioner and that of the appellate authority confirming the order of externment are rendered invalid and illegal and deserve to be quashed an set aside.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned orders at Annexures B and C to the petition are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)